

BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION

FILE NUMBER 13-757126

MICHAEL FRITTS
(Hereinafter called "Employee")

FORSYTH COUNTY
(Hereinafter called "Employer")

PMA COMPANIES
(Hereinafter called "Servicing Agent").

AGREEMENT OF FINAL SETTLEMENT AND RELEASE

THIS AGREEMENT OF FINAL SETTLEMENT AND RELEASE, made and entered into this, the 20th day of January, 2015, by and between Michael Fritts, hereinafter called the Employee, and Forsyth County, hereinafter called the Employer, and by and through PMA Companies, hereinafter called the Servicing Agent,

WITNESSETH:

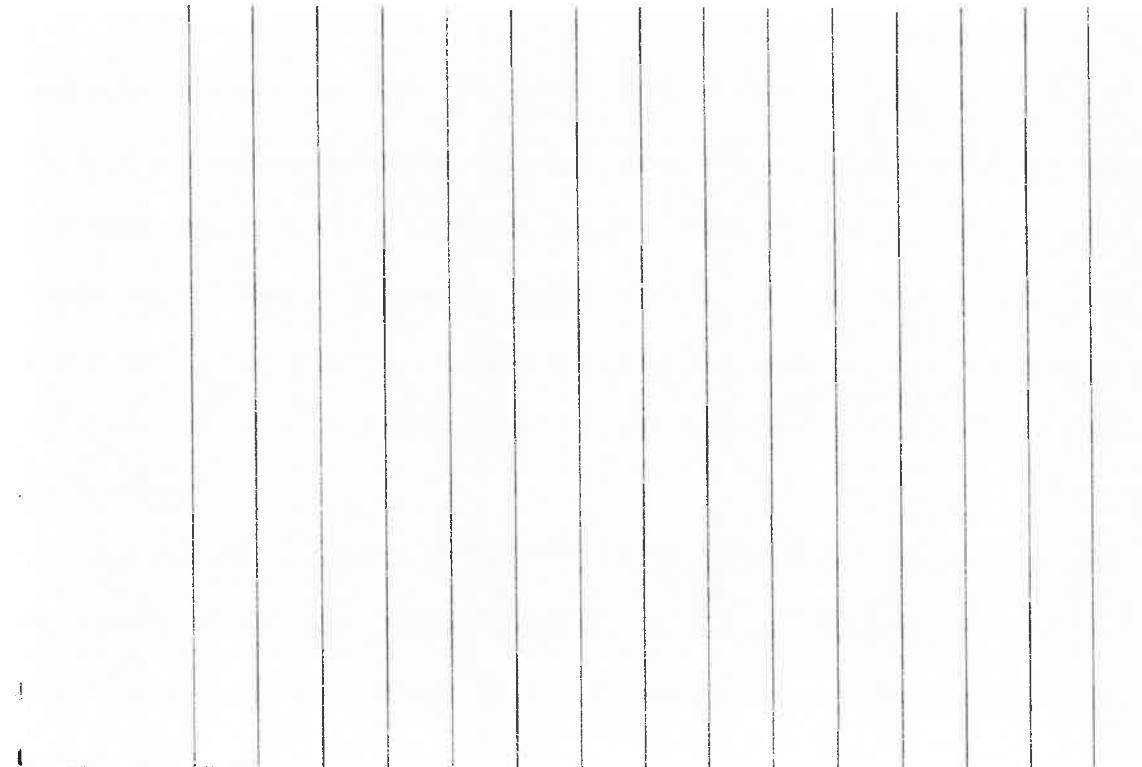
WHEREAS, the parties are subject to and bound by the provisions of the North Carolina Workers' Compensation Act and, on the 22nd day of August, 2013, the relationship of Employer-Employee having existed; and

WHEREAS, the Employee alleges an injury by accident to his left knee and left hip on the 22nd day of August, 2013, arising out of and in the scope of his employment as a Senior Maintenance Technician, when he stepped off uneven ground into a ditch and slipped, twisting his left leg and knee; and

WHEREAS, the Employer accepted the Employee's claim under a Form 60 for a left knee injury. The Employer contends that the Employee's average weekly wage is \$701.63, yielding a weekly compensation rate of \$467.78. Pursuant to the Form 60, the

Employer and Servicing Agent have paid approximately \$13,183.09 in medical benefits and \$868.76 in indemnity benefits. The Employer and Servicing Agent did not enter into an agreement for payment of compensation for the left hip since they deny that the Employee injured his left hip as a result of the August 22, 2013 accident; and

WHEREAS, the Employee, Employer, and Servicing Agent, in presenting this Agreement for approval, represent that they have made available to the Industrial Commission with the Agreement all material medical and rehabilitation reports known to exist and which are in their possession or in the possession of their attorneys. Accordingly, the Parties hereby stipulate and agree to waive any rights they may have to contest the approval of this Agreement based upon any failure to provide copies of medical or rehabilitation records to the Industrial Commission with this Agreement for approval; and



WHEREAS, the Employee is represented by The Law Offices of Timothy Welborn, PA, Winston-Salem, North Carolina, Timothy Welborn appearing; and the Employer and Servicing Agent are represented by the Kestenbaum Law Firm, Durham, North Carolina, Jane Kestenbaum appearing; and

WHEREAS, the Employee, Employer, and Servicing Agent feel that it is in the best interests of the parties to have finality of litigation in these matters, and to that end desire to compromise and settle all matters in controversy among themselves, without the necessity of any hearing before the North Carolina Industrial Commission, subject to the approval of said Commission, as by law provided.

NOW, THEREFORE, in consideration of the things hereinabove received as having been done and the things hereinafter agreed to be done and the mutual agreements on the part of each of the parties, it is agreed as follows:

1. The Employer and Servicing Agent agree to pay or cause to be paid to Employee and without commutation, the lump sum of ELEVEN THOUSAND DOLLARS

AND NO CENTS (\$11,000.00) in full and final settlement of all compensation due or to become due under and by virtue of the North Carolina Workers' Compensation Act; and

WHEREAS, Employee was born on Jt : and is 62 years of age as of the execution of this agreement, and according to the mortuary table contained in N.C.G.S. § 8-46 has a remaining life expectancy of 19.7 years, and

WHEREAS, the employee contends that he is unable to work in competitive employment which is available in significant numbers in the local and regional economy since June 30, 2014 and will continue to be unable to do so for the period of his life expectancy, and

WHEREAS, the employee acknowledges and represents this settlement agreement forecloses the possibility of future payment of wage loss and medical compensation or other workers' compensation benefits, but is not intended to constitute an admission of liability as to the causation or liability as to the conditions specified above, and

WHEREAS, the payments under this agreement are intended as compensation for injuries or sickness within the meaning of section 104A-1 of the internal revenue code. In this regard, no Form 1099 would be issued for any sums paid hereunder, and

WHEREAS, the settlement amount of \$11,000.00 is to be paid in one lump sum. From the settlement amount of \$11,000.00, attorney fees in the amount of \$2,750.00 are to be subtracted, subject to the approval of the North Carolina Industrial Commission. The remaining \$8,250.00 is attributed as being prorated over the period of 19.7 years from the date of this Agreement, for an attributed rate of \$34.90 per month.

2: Whereas it is not the intention of the parties to this Settlement Agreement to shift responsibility for future medical treatment that the Employee may need to Medicare at some future time. In considering these issues, the parties specifically considered the fact that the Employee's medical bills and medical expenses for the left knee have been paid by the Employer; the Employee is unlikely to receive an award of Social Security Disability benefits as a result of his accident on August 22, 2013; and the Employee is currently not Medicare eligible and has no reasonable expectation of becoming Medicare eligible related to the alleged injury/disease that is subject of this Agreement. Therefore, no Medicare Set Aside has been established.

3. The Employer and Servicing Agent agree to pay or cause to be paid to the persons thereunto entitled, any bills for related medical expenses incurred as the result of the accepted, compensable left knee injury on August 22, 2013 up to the date of this agreement. It is further agreed by the parties that the positions of the respective parties to this Agreement are reasonable as to the payment of medical benefits. The Employer and Servicing Agent do not agree to pay any bills for medical expenses in the denied and disputed left hip claim, and the Parties to this Agreement thereby request that the Industrial Commission waive Industrial Commission Rule 502(2)(b). See, medical expense sheet attached. It is further agreed by the parties that the positions of the respective parties to this Agreement are reasonable as to the payment of medical benefits. The parties hereby acknowledge that the issue of payment of medical expenses is a material element to the Employer and Servicing Agent entering into this Agreement.

4. The Employer agrees to pay or cause to be paid the costs of this proceeding before the North Carolina Industrial Commission.

5. The Employee agrees to accept the sums herein agreed to be paid to him or on his behalf, in full, final and complete settlement and satisfaction of any past, present and future claims, demands, suits, actions or rights of action of whatsoever nature and kind, including claims for death benefits and funeral or similar expenses, which the said Employee, his beneficiaries, heirs, administrators or assigns, now has or may hereinafter have or claim to have on account of said workers' compensation claim. It is the sense of the agreement that the said sums so agreed to be paid shall be accepted in full settlement and satisfaction of all claims arising out of said alleged workers' compensation claim, whether presently existing, or presently known, or whether hereinafter existing, appearing or otherwise, and whether by virtue of things now existing or by change of conditions hereinafter. However, it is further agreed that no rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released. The Employee knowingly and Intentionally waives any right he may hereafter have to claim any medical expenses, indemnity compensation, or death benefits for the injuries which are the subject of this agreement.

6. The parties to this agreement hereby waive any hearing before the North Carolina Industrial Commission, and in presenting this agreement for approval, they represent that they have made available to the Commission with said agreement all medical information presently in their possession concerning the Employee's physical condition.

7. The Employee in making this Release states that he was not influenced by

any representations or statements regarding his condition or regarding any other matters, made by any person, firm or corporation, or by any physician or surgeon acting for or on behalf of the Employer, and that the facts in connection with his employment and with his resulting injury are fully known, understood, and comprehended by the Employee. In making this Release the parties hereto understand that the Employee's condition as a result of his injury may be permanent, recurrent, and progressive, and in making this Release and Agreement it is understood that the sum of money herein paid and other agreements recited above are in full and final settlement of all claims of the Employee against the Employer and Servicing Agent as to claims under the North Carolina Workers' Compensation Act, including future medical expenses and change of condition and/or death benefits. The parties expressly waive the right, if any, to set aside this Settlement Agreement should the medical opinions made orally to the Employee by his health care providers, expressed in this Agreement, and/or in the medical records prove to be in error. Further, the parties agree that this Agreement may not be set aside on the grounds that further or additional medical information or records exist or could be acquired. The parties affirmatively represent to the Industrial Commission that they have each had the opportunity and ability to obtain the medical and other records necessary to appropriately evaluate this claim and to enter into this Settlement Agreement.

8. This agreement is made expressly subject to the approval of the North Carolina Industrial Commission and to the provisions of the North Carolina Workers' Compensation Act, and the same shall be binding upon the parties to this agreement only if and when the same shall have been submitted to and approved by said

Commission either by the endorsement of its approval hereon or by the issuance of its award approving the same.

IN WITNESS WHEREOF, the parties hereto have set their hands and Employee has adopted as his seal the "Seal" appearing beside his signature, all as of the day and year first above written.


(Seal)
MICHAEL FRITTS, EMPLOYEE

STATE OF NORTH CAROLINA

COUNTY OF Wilkes

I, Glenda G. Day, a Notary Public in and for said County and State, do hereby certify that MICHAEL FRITTS personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this, the 10th day of February, 2015.

Glenda G. Day
Notary Public

My Commission Expires: 12/15/2015

FORSYTH COUNTY, Employer

By:

Jane K
Attorney

PMA COMPANIES, Servicing Agent

By:

Jane K
Attorney

By:

Jane K
Jane Kestenbaum
NC State Bar No. 16459
Attorney for Employer
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Consented to by:

The Law Offices of Timothy Welborn, PA

By:

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Attorney for Employee
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